

The CURE

Contract User's Resource for Excellence

The "CURE" is a quarterly newsletter of the State Controller's Office

Volume 8, Issue 2

May 2002

News From The SCO A State Controller's Office Update

? CCIT Meeting

The May CCIT Meeting will be held on Wednesday, May 29th from 9:00 - 12:00 in Building 100 at Camp George West. Camp George West is located just East of Golden on Old Golden Road. The address is 15055 So. Golden Road. If you have questions about the meeting or the location, please call a member of the Central Contract Unit.

An agenda for the upcoming meeting is included on the last page of this issue of the CURE.

What's Inside
this Issue

- - - Insurance Requirements
- - - Walk Through Policy Reminder

What does ET and a state bank account have in common?

E-MAIL ADDRESS CHANGES

To make sure you do not miss an issue of the CURE or other important state contract information be sure that you keep your e-mail address current by sending changes to Kevin in the SCO CCU at:
kevin.cruise@state.co.us



Central Approvers Names and Numbers

NAME	PHONE #	FAX #
<u>Department of Personnel & Administration (DPA)</u>		
State Controller's Office (SCO)		
Central Contract Unit:	Phone Number	Fax Number
Phil Holtmann	303-866-3809	303-866-4233
Yvonne Anderson	303-866-2862	303-866-4233
<u>Routing, Distribution and E-mail Updates:</u>		
Kevin Cruise	303-866-2127	303-866-3569
<u>Fiscal Rule Waivers and Statutory Violations:</u>		
John Ivy	303-866-3765	303-866-3569
Human Resource Services (DPA/HRS)		
<u>Personal Services Review Program:</u>		
Joi Simpson	303-866-5496	303-866-2458
State Buildings and Real Estate Programs		
Carol Lieber (SBREP)	303-866-3158	303-894-7478
Donna Barr (REP)	303-866-4564	303-866-2201
Clark Bolser (REP)	303-866-4759	303-866-2201
Bob Marshall (REP)	303-866-2204	303-866-2201
State Purchasing (SPO)		
Kay Kishline	303-866-6181	303-894-7444
Monica Rahman	303-866-6155	303-894-7440
Office of the Attorney General (AGO)		
Robert Bowers	303-866-5027	303-866-4139
Bea Pagette	303-866-5227	303-866-4139
David Kaye	303-866-5142	303-866-4139

NOTE: You may e-mail any of the above by using the following format: **firstname.lastname@state.co.us**

Personal Services Update

By Joi Simpson, DPA/HRS

HR ADMINISTRATORS PERSONAL SERVICES REVIEW

Beginning July 1, 2002, HR Administrators will be responsible for reviewing and signing the *Certification for Personal Services Agreements* form before submitting to this office for review and approval. Any request logged in on July 1 that does not have a signature from HR, will not be processed.

The effort to reintegrate the HR Administrators into the personal services review process is moving along at a steady pace. To date over 100 contracts, human resource and purchasing personnel have participated in the PCP Personal Services Contracts training. It is the intent that all HR Administrators and their staff will be the only personnel authorized/certified to sign certification forms.

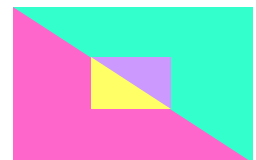
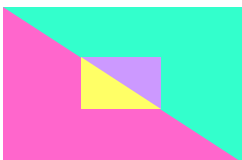
In order to make this a successful transition, purchasing, contracting and human resource staff must work collectively. As this process gets established and is in place for a period of time, it is our intent to request an opinion from the Attorney General that supports our efforts to fully delegate this function to agencies. However, in order for us to move in that direction, we need to prove we have the appropriate processes in place at the agency level. We will not dictate to agencies how to implement this process; however, will be available to provide assistance and advice.

CONTRACT MODIFICATION FORM

The *Modification of Personal Services Agreements* form is created specifically for contract amendments of any type, including purchase orders. Should there be a change in scope or contract dollar amounts, the request, along with the modification form, needs to be routed for personal services review and approval. If there is no change in scope or contract dollar amounts, agencies may self certify, on this form, and by pass personal services review.

Modifications that are decreasing scope of service or the dollar amount or, just extending the term of the contract, are not considered significant changes that require personal services review. However, a modification form will need to be attached and routed with the contract. If this form is not attached to a contract amendment routed to the external approvers, your contract could be delayed.

To comply with CRS 24-50-509 agencies will self certify, on this form, that the facts and terms of the original approval have not materially changed. This form must be completed, signed, dated and routed with contract amendments. Please begin using this today. You'll note that your HR representative needs to sign off on the form. We recognize that most HR Administrators have not completed the PCP training, however; this is an opportunity to begin integrating HR into the review process now.



Professional Services Procurement Requirements (for Capital Construction)

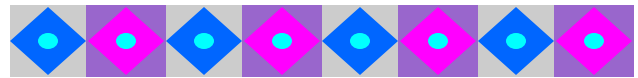
By Phil Holtmann, SCO

Several agencies recently have contacted the SCO to inquire about the use of contracts for professional services. CRS 24-30-1401 contains the requirements, which must be met when securing the professional services provided by architects, industrial hygienists, engineers, landscape architects, and land surveyors. CRS 24-30-1401 through 24-30-1405 not only describes the type of services, but also sets the parameters for the vendor selection process when an individual or firm is hired by the state to perform one of these types of professional services. When an individual or firm is selected to perform one of these services, State Fiscal Rule 3-1 applies **and a state contract must be used** as the commitment voucher for the service, regardless of the total dollar amount of the procurement. If a state contract creates a hardship on the agency, your agency chief fiscal officer may request a waiver.

On occasion an individual or firm that primarily provides professional services may be hired to provide services that are not considered professional in nature. In these cases a state contract may or may not be necessary, depending on the total dollar value of the procurement. Please note, as with all other procurements, when non-professional services are needed Procurement Rules apply.

Should questions arise as to whether an individual or firm is being hired to provide professional services or services that are not considered professional in nature, please call Carol Lieber at State Buildings and Real Estate Programs at 303-866-3158 or you may send an e-mail to carol.lieber@state.co.us.

Should questions arise as to whether a state contract or a State Fiscal Rule waiver is necessary for



professional services procurement, please give me a call. Based upon information provided by the agency, our office will determine whether the State Fiscal Rule applies and if a waiver is the best course of action for the procurement. You may reach me at 303-866-3809 or send an e-mail to phil.holtmann@state.co.us.

A REMINDER—WALK THROUGH POLICY

By the Central Approvers (CATF)

PERSONAL SERVICES PROGRAM POLICY

A request for a walk through must be made 24 business hours in advance. Walkthroughs are to be used for emergency situations. An emergency is defined as an unforeseen circumstance beyond an agency's control.

Please be mindful that when a walk through is requested, all other requests waiting for approval go on hold and hence get delayed. In addition, contract review and approval is not the only assignment Central Approvers have. Please respect our schedules.

To request a walk through for personal services review, please call Joi Simpson at (303) 866-5496.

ATTORNEY GENERAL'S OFFICE POLICY

This office does not have a walk through policy. However, if an agency has a contract that is a "RUSH" (I. e.—an emergency situation), please call Bea Pagette at (303) 866-5227. Bea will alert Robert Bowers and your contract will be processed in a more timely manner.

STATE CONTROLLER'S OFFICE POLICY

The SCO's walk through policy requires an agency representative to call and make an appointment. In addition, this policy is to be used for emergency situations (not because your agency was late in processing the contract). Also, you should have other necessary reviews and approvals from all other Central Approvers prior to your appointment with the SCO. Yvonne Anderson is the primary contract reviewer and you may reach her at (303) 866-2862.



INSURANCE REQUIREMENTS



By Richard Pennington, State Purchasing Director

On all IFBs and RFPs for personal services, the Division of Purchasing requires as a matter of policy that solicitations include insurance requirements. The standard State insurance provision is included at clause A-15, page 6-50 of the *Colorado Contract Procedures and Management Manual*. A description of insurance is at page 6-19 of the *Manual*.

As a matter of policy, this requirement has only been applied automatically to IFBs and RFPs for services. This requirement was intended to insure that the State is protected against third party claims or other damages from service performance, the type of contract performance most likely to result in claims against the State. While the State normally would not be liable unless it were deemed to be an "agent" of a vendor, the presence of a vendor on State property or other overt identification of a vendor with a State program makes the State a likely target of a lawsuit whenever a third party is injured by the vendor during performance.

The second reason for the insurance requirement has been to insure that the State is contracting with responsible vendors, those who are financially able to perform. As a rule, most commercial vendors do not have a problem with the State's insurance requirements.

There is no State statute, rule or policy that requires inclusion of the insurance clause in other types of procurements, e.g. sole source and documented quotes. However, we consider an analysis of insurance requirements to be a necessary part of any acquisition, whether micro-purchase (less than \$3,000), other discretionary purchases, documented quote, or sole source. We recommend on noncompetitive acquisitions that you balance against the cost of requiring insurance the following:

- ? Whether the unique nature of a supply being furnished may have a reasonable potential for third party claims or other damage to State property or personnel;
- ?The extent to which performance of the agreement may pose a risk of damage to State property or injury to personnel;
- ?The length of time that the contractor will be on State property during performance of the work, and the nature of the services being performed there, e.g. handling hazardous equipment or materials;
- ?The type of State property where the contractor will perform services -- e.g. motor vehicles, hospitals, correctional/water/gas/sanitation/electrical/power/swimming facilities -- with more scrutiny given to locations within the confines of operations (as defined in CRS 24-10-106 (a) (b) (f)), because broader risk exposure exists in the Governmental Immunity Act for "operations"
- ?Whether the vendor will be interacting with State clients, students, and/or persons entrusted to the State's care;
- ?The likelihood, that regardless of the nature of the performance, that the vendor may be publicly perceived as being an agent of the State or otherwise identified with the State program.

We recommend that you consult with your servicing legal counsel in cases where there may be a question about requiring insurance in any particular procurement, modifying the standard insurance language, or accepting "self insurance" as alternatives to standard insurance coverage. Because the Risk Management Office has the statutory power to "assist state agencies to develop and use proper insurance and indemnity clauses in state contracts," CRS 24-30-1505, you might consider a call to their office in doubtful cases as well.

AG Notes

Deliveries to the AG's Office

By Robert D. Bowers, Assistant Attorney General

As many of you know, the security in the Attorney General's office does not allow most people access to the sixth (6th) floor. Of course, the State Controller's Assistant Attorney General's office (i.e. Robert Bowers' office) is located on the 6th floor. As a result, to "hand-deliver" a contract or other document to said Assistant Attorney General, you traditionally had two choices; 1) you could drop the contract off on the second floor (i.e. with Kevin Cruise at the State Controller's office) or 2) leave the contract with the Attorney General's receptionist on the seventh floor.

Due to various problems associated with option #2 above, from this point forward, no contracts or contract related documents will be accepted by the Attorney General's receptionist on the seventh floor (You will be turned away without passing "Go" or collecting your \$200 dollars). If a hand delivery is required, please give your document(s) to Kevin Cruise on the second floor or call Robert Bowers for an appointment to meet you downstairs, in which case your agency will be billed for Robert's time. If you choose to leave your contract/contract related document with Kevin, you will discover this option has many advantages including: 1) the contract/contract related document will get to the State Controller's Assistant Attorney General in record time, 2) the contract will be properly logged into COFRS, 3) you will make Robert Bowers and the Attorney General's 7th floor receptionist very happy, and 4) you may get the opportunity to say hello to Kevin Cruise!

Thanks and if you have any questions, please feel free to call me at 303-866-5027.



On the World Wide Web at :

www.sco.state.co.us/

CONTRACT PROCEDURES AND MANAGEMENT
MANUAL

[contract/contractprocedures.htm](http://www.sco.state.co.us/contract/contractprocedures.htm)

CURE
[cure/cure.htm](http://www.sco.state.co.us/cure/cure.htm)

PERSONAL SERVICES REVIEW PROGRAM
AND RELATED FORMS

Real Estate Programs — A New Policy

By Donna Barr, Asset Manager

With approval from the Attorney General and the State Controller, Real Estate Programs is phasing in a new policy concerning conveyance or transfer of a leasehold property from the current lessor to a new lessor. Formerly an agency or institution was required to get a *Novation Agreement* signed by both the former owner (the lessor) and the new owner (the new lessor) along with signatures by the agency and all Central Approvers. The state standard lease forms have now been revised to include a section dealing with this circumstance (see below). By inclusion of this language, *Novation Agreements* will no longer be required for agencies operating under a new lease agreement or when a lease has been amended to add this language.

For situations where the current lease does not include the new language by use of the revised form or by an amendment, a Novation Agreement will still be required if the property is transferred to a new owner.

The state standard lease forms have been revised to include the following additional provision:

29. CONVEYANCE OF THE PREMISES: ATTORNMEN AND NON-DISTURBANCE. If the premises are sold, transferred or conveyed, or if Lessor assigns this lease, Lessor shall provide notice pursuant to section 18 of this lease within ten (10) days of such conveyance or assignment. Said notice shall include the name and address of New Lessor, Social Security or Federal Employer's Identification Number of New Lessor and a copy of the deed, assignment agreement, or other evidence of the conveyance or assignment.

Lessee agrees to attorn to any assignee of this lease, or to any purchaser of the Premises, or any other successor owner or assignee of Lessor through foreclosure or deed in lieu of foreclosure (the "New Lessor"), provided the New Lessor grants to Lessee a non-disturbance agreement which provides that Lessee, notwithstanding any default of Lessor hereunder, shall have the right to remain in possession of the Premises in accordance with the terms and provisions of the lease for so long as Lessee shall not be in default under the lease. The non-disturbance agreement shall be executed by the New Lessor and shall indicate that: (1) nothing in the non-disturbance agreement shall be construed as a waiver of any rights of the Lessee against the Lessor; and (2) all payments previously made by the Lessee to the Lessor and all other previous actions taken by the Lessee under the lease, shall be considered to have discharged those obligations of Lessee under the lease.

The new document required is a Non-disturbance Agreement provided by the new lessor to the tenant agency with the provisions described above. This is a unilateral contract, which does not require signature by the agency, Real Estate Programs, the Attorney General or the State Controller. The tenant agency will be responsible for liquidating the encumbrance for the former lessor and encumbering the lease for the new owner.

When the state standard lease forms are reviewed for additional changes later this year, an addition will be made to the notice section requiring copies of all notices to be sent to Real Estate Programs as well as to the tenant agency. In the meantime, please send copies of all correspondence, evidence of conveyance or transfer, and non-disturbance agreements to Real Estate Programs for our records and so that we may keep the leased-property inventory database up-to-date.

If you have any questions, please contact me at (303) 866-4564 or at donna.barr@state.co.us.



By Douglas S. Windes, Cash Manager, Department of Treasury

In the summer of 1997, NASA's Jet Propulsion laboratory successfully landed a surface probe on Mars. The probe, called PATHFINDER, did not transmit any messages for several days. Most people believe the failure stemmed from technical difficulties, but others noted ominously that an unexplained shadow passed over Pathfinder soon after landing. So what? As a state administrator, why should you care about an extra-terrestrial communication failure?

If an out-of-state bank account is part of your contract, you should care very much. You don't want to lose communication with your out-of-state bank. It's unlikely to re-appear and any state moneys deposited in the bank may have departed like ET.

Out-of-state bank accounts are frequently used by vendors to deposit delinquent funds collected on behalf of state agencies. Although such a service frequently makes business sense, the out-of-state banks are not normally subject to C.R.S. 11-10.5-111 the Public Deposit Protection Act (PDPA) and fiduciary issues arise if the depository account is titled in the vendor's name.

Two conditions are required before engaging a vendor to deposit funds in an out-of-state bank account. The first is the approval of the state treasurer and controller to open the account as required by C.R.S. 24-36-104. Paragraph 104(2.5) permits the deposit of state funds in an out-of-state bank for an agency to "operate projects in other states".

The second condition reduces the risk to state funds by including certain provisions in the contract. The account must be titled in the name of the state with a state personnel signatory and the account must be in a bank covered by FDIC insurance.

Since under the statute the state agency "shall...have full responsibility for the safety of deposits", two additional agency management procedures are critical for safeguarding the funds. The first is to transfer funds on a schedule that minimizes transfer costs, but more importantly minimizes daily balances in the account. The second is to ensure deposits do not drive the daily balances even close to the \$100,000 federal insurance coverage limit.

The problems with Pathfinder in summer of 1997 were corrected and the mission was a success. It was a close call, but a state agency would probably not enjoy a similar experience with an out-of-state bank account. In summary, be aware of applicable state laws concerning out-of-state bank accounts and don't hesitate to call Treasury (303-866-3253) for assistance.



Purchasing Office Approval of Services Contracts Over \$5,000

By Richard Pennington, State Purchasing Director



Procurement Rule R-24-103-204-03 was revised effective November 1, 2001 to add a new subparagraph (g):

Procurement of services greater than \$5,000 must be reviewed by the delegated purchasing official for a determination that prices or rates are fair and reasonable.

For agencies/institutions-using purchase orders for services over \$5,000, this rule does not represent a change in practice, because an authorized purchasing agent is issuing the purchase order. However, this rule change requires a purchasing office approval of contracts for services over \$5,000 that are covered by the Procurement Code (e.g. contracts with other governmental entities would not be covered). Approval is performed by the Group I purchasing delegate or an authorized purchasing director/agent from a Group II purchasing agency. For COFRS agencies, enter the approval on the CLIN table.

The purpose of this change was to involve procurement professionals in review of pricing of commercial services contracts exceeding the commitment voucher threshold. The rule does not change the “discretionary” award ceiling of \$25,000 for services: services can be contracted up to \$25,000 without any use of any formal competitive process like a request for quote, IFB, or RFP. The review and approval simply affirms that prices and rates are fair and reasonable.

CCIT (Colorado Contract Improvement Team) Meeting

Wednesday, May 29, 2002

Camp George West – Golden, Colorado – Building 100

Agenda

9:00-9:05	Welcome	Phil Holtmann
9:05-9:45	Real Estate Programs	Donna Barr
9:45-10:00	SCAT Update	Roger Thomte
10:00-10:15	BREAK	All
10:15-10:30	Personal Services Program	Joi Simpson
10:30-11:15	Modification Policy	Phil Holtmann
11:15-12:00	Other Business/Questions	Phil Holtmann